

Name Andre' M. FERGUSON  
 Address COUNTY JAIL #5, P.O. BOX 67  
SAN BRUNO, CALIFORNIA  
(zip code) 94066  
 CDC or ID Number 2344489

E-filing

FILED  
 MAR 11 PM 3:32  
 RICHARD W. WILKINS  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 MMC  
 130  
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United States District Court  
 Northern District of California  
 (Court)

MMC

## PETITION FOR WRIT OF HABEAS CORPUS

CV 08

1394 (PR)

(To be supplied by the Clerk of the Court)

Andre' M. FERGUSON

Petitioner

vs.

District Attorney

Respondent

## INSTRUCTIONS - READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six



## This petition concerns:

☐ A conviction☐ Parole☐ A sentence☐ Credits☐ Jail or prison conditions☐ Prison discipline☒ Other (specify): VIOLATION OF CONSTITUTIONAL RIGHTS/DUE PROCESS

1. Your name: Andre' M. FERGUSON
2. Where are you incarcerated? COUNTY JAIL #5' P.O. BOX 67' SAN BRUNO' CA. 94066
3. Why are you in custody? ☐ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: \_\_\_\_\_

c. Name and location of sentencing or committing court: HALL of Justice' 850 BRYANT STREET,  
SAN FRANCISCO' CALIFORNIA - 94103

d. Case number: 2344489

e. Date convicted or committed: NA

f. Date sentenced: NA

g. Length of sentence: NA

h. When do you expect to be released? SOON AS THIS COURT GRANTS RELIEF SOUGHT IN PETITION

i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
ERIC QUANDT' office of THE Public Defender' 555-seventh  
STREET' SAN FRANCISCO' CALIFORNIA - 94103

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☒ Awaiting trial

## 6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order).

THE PROSECUTION HAS OPENLY VIOLATED STATE LAW (PEN.C.#825) CODE OF CIVIL PROCEDURES § 134-135, GOVT. C 6700, 6706 AND MY CONSTITUTIONAL GUARANTEES UNDER THE 5<sup>TH</sup>, 6<sup>TH</sup>, AND 14<sup>TH</sup> AMENDMENTS TO THE U.S. CONSTITUTION. ~~I am filing a motion to dismiss because of these violations~~

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

I WAS ARRESTED ON NOV. 27<sup>TH</sup>, 2007. HELD IN CUSTODY SINCE. THEN UNLAWFULLY ARRAIGNED "9" DAYS LATER ON DEC. 6<sup>TH</sup>, 2007 IN DEPT. #9 BY JUDGE CURTIS A. KARNOW. I TRIED IN VAIN TO BRING THE ISSUE OF THIS STATUTORY VIOLATION OF ONLY 48 HOURS AFTER MY ARREST IS AFFORDED FOR ARRAIGNMENT UNDER CALIFORNIA LAW. (PEN.C.#825) A PROMPT ARRAIGNMENT IS A COMPONENT OF THE RIGHT TO SPEEDY TRIAL. THIS VIOLATION OF THE LAW BY THE PROSECUTION IN MY CASE. HAS INFACIT VIOLATED CONSTITUTIONAL GUARANTEES TO DUE PROCESS UNDER THE 5<sup>TH</sup>, 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS TO THE U.S. CONSTITUTION. FURTHERMORE THESE VIOLATIONS BY THE PROSECUTION HAS IMPAIRED AND PREJUDICED MY ABILITY TO PREPARE A DEFENSE \*NOTE\* ~~enclosed motion to dismiss denial of due process~~

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PEOPLE-V-VALENZUELA (1978) PEOPLE-V-THOMPSON (1980)  
PEOPLE-V-PETTINGILL (1978) PEOPLE-V-WILSON (1963)  
PEOPLE-V-PICKENS (1981)  
COUNTY OF RIVERSIDE -V- McLAUGHLIN (1991)

7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

~~Under California law, delay of prosecution is unlawful and it is negligent or intentional.~~ I petition for a dismissal of accusatory pleading or/and information because of this violation of the law by the prosecution.

a. Supporting facts:

How can I possibly have a speedy and fair adjudication as prescribed under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution... which guarantees these due processes of law. When the prosecution has openly violated all of the above constitutional guarantees and as well as these laws Penal Code # 825(a)(1), California Constitution Art 1 § 7(a), Cal. Const Art 1 § 14 (arraignment for felony) Cal. Const Art 1 § 15, Cal. Const Art 1 § 29, Code of Civil Procedure 134-135, Govt. C 6700, 6706. With these many violations of the law and my rights by the prosecution... the only speedy and fair adjudication that can be upheld by the prosecution in this case **SHALL** and must be a dismissal \*enclosed\* is my motion to dismiss for violation of due process and violation of Penal Code Section 825. Which proves all these numerous violations of the law and constitutional guarantee violations: "~~Enclosed~~"

b. Supporting cases, rules, or other authority:

Pen. C # 825, The 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, Cal. Const Art 1 § 7(a), Cal. Const Art 1 § 14 (ARRAIGNMENT FOR FELONY) Cal. Const Art 1 § 15, Cal. Const Art 1 § 29, Code of Civil Procedure 134-135, Govt. C-6700, 6706

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

NA

b. Result

NA

c. Date of decision:

NA

d. Case number or citation of opinion, if known:

NA

e. Issues raised: (1)

NA

(2)

NA

(3)

NA

f. Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

NA

9. Did you seek review in the California Supreme Court? ☐ Yes. ☒ No. If yes, give the following information:

a. Result

NA

b. Date of decision:

NA

c. Case number or citation of opinion, if known:

NA

d. Issues raised: (1)

NA

(2)

NA

(3)

NA

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

NA

NA

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

THIS PETITION CONCERNS VIOLATION OF MY  
CONSTITUTIONAL RIGHTS AND DOES NOT  
WARRANT A ADMINISTRATIVE REVIEW

b. Did you seek the highest level of administrative review available? ☐ Yes. ☒ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: NA
- (2) Nature of proceeding (for example, "habeas corpus petition"): NA
- (3) Issues raised: (a) NA
- (b) NA
- (4) Result (Attach order or explain why unavailable): NA
- (5) Date of decision: NA
- b. (1) Name of court: NA
- (2) Nature of proceeding: NA
- (3) Issues raised: (a) NA
- (b) NA
- (4) Result (Attach order or explain why unavailable): NA
- (5) Date of decision: NA

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

NA  
NA

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

UNREASONABLE delay of ARRAIGNMENT

16. Are you presently represented by counsel? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

ERIC QUANDT, PUBLIC DEFENDER, 555-SEVENTH STREET,  
SAN FRANCISCO, CA - 94103

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF  
CALIFORNIA CASE # CV-08-0951

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

THIS COURT HAS THE POWER TO GRANT IMMEDIATE RELIEF  
SOUGHT BY THIS PETITIONER OF DISMISSAL OF INFORMATION.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: March 6<sup>th</sup>, 2008

Mr. Andre' M. Ferguson  
(SIGNATURE OF PETITIONER)

1 Jeff Adachi  
2 Public Defender  
3 City and County of San Francisco  
4 Teresa Caffese  
5 Chief Attorney  
6 BY: Eric Quandt, 202829  
7 Deputy Public Defender  
8 555 Seventh Street  
9 San Francisco, CA 94103

10 (415) 553-9554

11 Attorneys for Defendant

12 Superior Court of the State of California

13 County of San Francisco

14 People of the State of California,

Lmt'd Jur. No. 2344489

15 Plaintiff,

**Motion to Dismiss For Due  
Process Violation and Violation  
of Penal Code section 825**

16 vs.

17 Andre Ferguson,

Date: 2-5-08  
Time: 2:00  
Dept. 25

18 Defendant.

19 **To: District Attorney and Clerk of the Above Entitled Court:**

20 Please take notice that on the above date and time, Defendant, Andre Ferguson will  
21 move this court for an order dismissing the Information for a violation of his 5<sup>th</sup> and 14<sup>th</sup>  
22 Amendment rights to due process. This motion will be based upon the attached motion, the  
23 papers prepared by the defendant, attached hereto, and any oral arguments to be adduced at  
24 the hearing.

25 **Memorandum of Points and Authorities**

26 **I. Mr. Ferguson Was Not Arraigned Within 48 Hours of His Arrest In Violation  
27 of Penal Code Section 825.**

28 Mr. Ferguson was arrested on November 27, 2007 at approximately 2:00 p.m.  
Exhibit A. He was not released from custody. A complaint was filed by the District  
Attorney's office on November 29, 2007. Exhibit B. Mr. Ferguson remained in the  
custody of the San Francisco Sheriff's department awaiting arraignment. He was not

1 brought to court until December 6, 2007.<sup>1</sup>

2 Penal Code section 825 provides that the defendant "shall in all cases be taken  
3 before the magistrate without unnecessary delay, and, in any event, within 48 hours after  
4 his or her arrest..." Penal Code section 825(a)(1). ~~Here, Mr. Ferguson was not brought to~~  
5 ~~court until 48 hours after his arrest.~~ The prosecution can provide no justifiable reason for  
6 this delay. Mr. Ferguson asserts that this unjustifiable delay violates his 5<sup>th</sup> and 14<sup>th</sup>  
7 Amendment right to due process under the law. Exhibit C.

8 **Conclusion**

9 For the foregoing reasons, Mr. Ferguson respectfully requests the court to dismiss  
10 the Information.

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13 Eric Quandt  
14 Deputy Public Defender  
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28 1. Counsel requests the court take judicial notice of the court file regarding the date of arraignment.

**Exhibit A**

FERGUSON, ANDRE

ADDR 815 BUENA VISTA WEST

JAILST COJ9

) JAILNO 02344489

) DOB 041466 B/M

) CELL # 9MP

) OPLIC:

) SSN

KEY DATES

) ARR 112707/1400

) BK 112707/1726

) OFF1: MOYLAN / 249

) OFF2:

N289914 02344489 BKD 11351HS/F; POSS/PURCHASE FOR SALE CON SUB;DEFSTATUS COJ9  
;ARR 112707/1400;INCN 071214777;ENTERED BY 847 ;MODIFIED BY  
847

N289915 02344489 BKD 11351HS/F; POSS/PURCHASE FOR SALE CON SUB

N289916 02344489 BKD 11351HS/F; POSS/PURCHASE FOR SALE CON SUB

N289917 02344489 BKD 11351HS/F; POSS/PURCHASE FOR SALE CON SUB

N289918 02344489 BKD 11375B1HS/F; POSS SALE/SELL CONTROL SUBST

N289919 02344489 BKD 11357(B)HS/M; POSS MARIJU 28.5 GR/LESS W/PR

N289921 02344491 BKD ENROUTEXX/F; CDC HD#T39291,\$NB,V3056PC;DEFSTATUS COJ9;ARR  
112707/1400;INCN 071214777;ENTERED BY 847

# ----- INFORMATION FOR ARRESTED PERSONS -----

IMPORTANT: THIS DOCUMENT IS YOUR NOTIFICATION OF CHARGES AND IDENTIFICATION  
WHICH IS GIVEN TO YOU ALONG WITH YOUR PROPERTY RECEIPT.  
KEEP BOTH FORMS WITH YOU AT ALL TIMES.

IF YOU ARE RELEASED, YOU ARE TO APPEAR IN COURT ON THE DATE AND TIME  
SPECIFIED. FAILURE TO APPEAR MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR  
ARREST OR OTHER ADDITIONAL PENALTIES.

AFTER BOOKING, YOU HAVE THE RIGHT TO MAKE THREE COMPLETED PHONE CALLS IN THE  
LOCAL DIALING AREA. PHONE CALLS MADE OUTSIDE THE LOCAL AREA WILL BE AT  
ARRESTEE'S EXPENSE.

IF YOU ARE ILL OR IF YOU ARE AWARE OF ANOTHER PRISONER IN NEED OF MEDICAL  
ATTENTION, IMMEDIATELY NOTIFY JAIL PERSONNEL.

YOU MAY BE VISITED BY AN ATTORNEY OF YOUR CHOICE.

VISITING HOURS ARE POSTED IN THE LOBBY OF THE JAIL.

IF YOUR VEHICLE HAS BEEN IMPOUNDED, YOU ARE RESPONSIBLE FOR ANY TOWING AND  
STORAGE CHARGES. VEHICLES LEFT IN STORAGE OVER 90 DAYS WITHOUT PAYMENT OF  
CHARGES CAN BE SOLD TO PAY FOR CHARGES. TOW INFORMATION PHONE: 553-1235.

FOR BAIL AND/OR COURT INFORMATION PHONE 553-9394. FOR O.R. PHONE 552-2202.

**Exhibit B**

KAMALA D. HARRIS, SB#146672  
District Attorney  
San Francisco District Attorney's Office  
850 Bryant Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Telephone: (415) 553-1752

ATTORNEYS FOR THE PEOPLE

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff,

v.

ANDRE M FERGUSON  
Defendant.

FELONY COMPLAINT

CASE NUMBER:  
2344489

The Undersigned, being sworn says, on information and belief, that:

COUNT: I

The said defendant, ANDRE M FERGUSON, did in the City and County of San Francisco, State of California, on or about the 27th day of November, 2007, commit the crime of UNLAWFUL POSSESSION FOR SALE OR PURCHASE OF CONTROLLED SUBSTANCE, to wit: Violating Section 11351 of the Health and Safety Code, a Felony, in that the said defendant did willfully and unlawfully possess for sale and purchase for purposes of sale a controlled substance, to wit: HYDROCODONE.

COUNT: II

The said defendant, ANDRE M FERGUSON, did in the City and County of San Francisco, State of California, on or about the 27th day of November, 2007, commit the crime of UNLAWFUL POSSESSION FOR SALE OR PURCHASE OF CONTROLLED SUBSTANCE, to wit: Violating Section 11351 of the Health and Safety Code, a Felony, in that the said defendant did willfully and unlawfully possess for sale and purchase for purposes of sale a controlled substance, to wit: OXYCODONE.

COUNT: III

The said defendant, ANDRE M FERGUSON, did in the City and County of San Francisco, State of California, on or about the 27th day of November, 2007, commit the crime of UNLAWFUL POSSESSION FOR SALE OR PURCHASE OF CONTROLLED SUBSTANCE, to wit: Violating Section 11351 of the Health and Safety Code, a Felony, in that the said defendant did willfully and unlawfully possess for sale and purchase for purposes of sale a controlled substance, to wit: METHADONE (DOLOPHINE).

COUNT: IV

The said defendant, ANDRE M FERGUSON, did in the City and County of San Francisco, State of California, on or about the 27th day of November, 2007, commit the crime of POSSESSION FOR SALE OF A DESIGNATED CONTROLLED SUBSTANCE, to wit: Violating Section 11375(b)(1) of the Health and Safety Code, a Felony, in that the said defendant did unlawfully possess for sale and who sells a designated controlled substance, to wit: ALPRAZOLAM.

**ALLEGATION OF PRIOR CONVICTION PURSUANT TO 11370(a) AND (c) OF THE HEALTH AND SAFETY CODE**

It is further alleged that said defendant, ANDRE M FERGUSON, was previously convicted of a felony within the meaning of Health and Safety Code sections 11370(a) and (c).

1. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of UNLAWFUL POSSESSION FOR SALE OR PURCHASE OF CONTROLLED SUBSTANCE, violating section 11351 of the Health & Safety Code, a Felony, on or about the 7th day of December, 1987, in the Superior Court of California, County of San Francisco, and having thereafter served a term of imprisonment therefore.

2. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of TRANSPORTATION, SALE AND GIVING AWAY OF A CONTROLLED SUBSTANCE, violating section 11352(a) of the Health & Safety Code, a Felony, on or about the 10th day of March, 1989, in the Superior Court of California, County of San Francisco, and having thereafter served a term of imprisonment therefore.

**ALLEGATION OF CONTROLLED SUBSTANCE PRIOR PURSUANT TO HEALTH AND SAFETY CODE 11370.2**

It is further alleged that said defendant, ANDRE M FERGUSON, was previously convicted of a felony within the meaning of Health and Safety Code sections 11370.2(a) and (c).

1. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of UNLAWFUL POSSESSION FOR SALE OR PURCHASE OF CONTROLLED SUBSTANCE, violating section 11351 of the Health & Safety Code, a Felony, on or about the 7th day of December, 1987, in the Superior Court of California, County of San Francisco, and having thereafter served a term of imprisonment therefore.

2. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of TRANSPORTATION, SALE AND GIVING AWAY OF A CONTROLLED SUBSTANCE, violating section 11352(a) of the Health & Safety Code, a Felony, on or about the 10th day of March, 1989, in the Superior Court of California, County of San Francisco, and having thereafter served a term of imprisonment therefore.

**ALLEGATION OF PRIOR FELONY WITH STATE PRISON PURSUANT TO PENAL CODE SECTION 667.5(b)**

It is further alleged that said defendant, ANDRE M FERGUSON, did serve a separate term in state prison and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667.5(b).

1. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of SECOND DEGREE BURGLARY - COMMERCIAL, violating section 459 of the Penal Code, a Felony, on or about the 11th day of July, 2005, in the Superior Court of California, County of San Francisco, and having thereafter served a term of imprisonment therefore.

2. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of SECOND DEGREE BURGLARY - COMMERCIAL, violating section 459 of the Penal Code, a Felony, on or about the 28th day of November, 2001, in the Superior Court of California, County of Monterey, and having thereafter served a term of imprisonment therefore.

3. The said defendant, ANDRE M FERGUSON, previously convicted of the crime of BATTERY ON POLICE OFFICER WITH INJURY, violating section 243(c) of the Penal Code, a Felony, on or about the 28th day of November, 2001, in the Superior Court of California, County of Monterey, and having thereafter served a term of imprisonment therefore.

Pursuant to Penal Code sections 1054 through 1054.7, the People request that, within fifteen (15) days, the defendant and/or his/her attorney disclose: (A) the names and addresses of persons, other than the defendant, he/she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements, of those persons including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial; (B) Any real evidence which the defendant intends to offer in evidence at the trial. This request is a continuing request, to cover not only all such material currently in existence, but all material which comes into existence to the conclusion of this case.

I state, declare, verify and certify under the penalty of perjury that the foregoing is true and correct. Executed in San Francisco, California on November 29, 2007.

/cv

---

OFFICER STEPHANIE LONG

**Exhibit C**

①  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA

VS.

NOTICE OF MOTION TO DISMISS  
BECAUSE OF DENIAL OF RIGHT  
TO DUE PROCESS

ANDRE' FERGUSON

TO THE ABOVE ENTITLED COURT AND TO THE DIS-  
TRICT ATTORNEY OF SAN FRANCISCO COUNTY STATE  
OF CALIFORNIA:

PLEASE TAKE NOTICE THAT ON JAN. 15<sup>TH</sup> 2008, IN  
DEPARTMENT #22 AT 9:AM OR AS SOON THEREAFTER  
AS THE MATTER MAY BE HEARD, THE DEFENDANT  
ANDRE' FERGUSON, WILL MOVE THAT THE COURT  
DISMISS THE ACCUSATORY PLEADING FILED HEREIN  
ON THE GROUNDS THAT THE PROSECUTION OF THE  
DEFENDANT HAS BEEN UNREASONABLY DELAYED,  
VIOLATING THE DEFENDANT'S RIGHT TO DUE PROCESS  
GUARANTEED BY THE FIFTH AND FOURTEENTH -  
AMENDMENTS TO THE UNITED STATES CONSTITU-  
TION AND ARTICLE 1 SECTION 15 OF THE CALIFORNIA  
CONSTITUTION. THE DELAY WAS A UNNECESSARY DE-  
LAY OF ARRAIGNMENT. I WAS ARRESTED ON NOV.  
27<sup>TH</sup>, 2007, HELD IN CUSTODY THEN TAKEN TO AN  
ARRAIGNMENT HEARING ON DEC. 6<sup>TH</sup>, 2007. THIS  
MOTION WILL BE BASED ON THE ATTACHED MEMORAN-  
DUM OF POINTS AND AUTHORITIES, ALL PAPERS FILED  
AND RECORDS IN THIS ACTION, EVIDENCE TAKEN AT  
THE HEARING ON THIS MOTION, AND ARGUMENT AT  
THAT HEARING.

JAN. 15<sup>TH</sup>, 2008

RESPECTFULLY SUBMITTED

②  
\* MEMORANDUM OF POINTS AND AUTHORITIES \*  
~ SUMMARY OF ARGUMENT ~

~~AN UNREASONABLE AND UNNECESSARY DELAY BETWEEN  
ARREST AND ARRAIGNMENT CONVERTS A LAWFUL  
ARREST INTO AN UNLAWFUL DETENTION.~~

\* STATEMENT OF FACTS \*

THE DEFENDANT WAS ARRESTED ON NOV. 27<sup>TH</sup> 2007.  
HELD IN CUSTODY. THEN TAKEN TO AN ARRAIGNMENT  
HEARING ON DEC. 6<sup>TH</sup> 2007. WHICH IS "9" DAYS  
AFTER HIS ARREST.

\* ARGUMENT \*

THIS IS A DIRECT VIOLATION A CONSTITUTIONAL RIGHT  
TO DUE PROCESS GUARANTEED UNDER THE FIFTH AND  
FOURTEENTH AMENDMENTS ~~16~~ THE UNITED STATES  
CONSTITUTION AND ARTICLE 1 SECTION 15 OF THE CAL-  
IFORNIA CONSTITUTION. THE RIGHT OF DUE PROCESS  
PROTECTS A DEFENDANT'S INTEREST IN FAIR ADJUDICATION  
BY PREVENTING UNJUSTIFIED DELAYS THAT WEAKEN  
THE DEFENSE THROUGH THE DIMMING OF MEMORIES,  
THE DEATH OR DISAPPEARANCE OF WITNESS AND THE  
LOSS OR DESTRUCTION OF MATERIAL PHYSICAL EVIDENCE.  
\* PEOPLE V- MARTINEZ (2000) 22 CA4<sup>TH</sup> 750, 767,  
94 CR2d 381.

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~~THE DELAY IN THIS CASE PREJUDICED THE DEFENDANT'S ABILITY TO PREPARE THE DEFENSE~~

SINCE THE DEFENDANT WAS HELD IN CUSTODY FOR SEVERAL DAYS PAST THE PRESCRIBED TIME AFFORDED FOR ARRAIGNMENT UNDER THE LAW OF THE CALIFORNIA PENAL CODE. THE DEFENDANT ASSUMED THAT THE PROSECUTION OF THIS CASE WAS DISMISSED. THEREFORE THE DEFENDANT INADVERTENTLY LOST CONTACT WITH A COUPLE OF WITNESSES IN HIS POSSIBLE DEFENSE. (PEOPLE V- ARCHERD (1970) 3 C3d 615 '91 CR 397; BARKER V- WINGO (1972) 407 US 514 '33 L Ed 2d 101 '92 S Ct 2182; THEN THE DEFENDANT WAS PREJUDICED BY THE LARGE OF TIME. BECAUSE ANOTHER OF THE DEFENDANT'S POSSIBLE WITNESS IN HIS DEFENSE WAS SHOT TO DEATH ON ELLIS AND JONES STREETS LAST MONTH. PEOPLE V- MARTINEZ (2000) 22 CA4<sup>TH</sup> 750 '767 '94 CR2d 381. THE DEFENDANT IN THIS CASE HAS BEEN PREJUDICED BOTH BY THE LOSS OF TWO MATERIAL WITNESSES AND BY THE DEATH OF A THIRD WITNESS. AND BY THE OTHER FACTORS RECOGNIZED BY THE UNITED STATES SUPREME COURT IN US- V- MARION (1971) 404 US 307 '92 S Ct 455 '30 L Ed 2d 468. AS QUOTED IN SERNA V- SUPERIOR COURT (1985) 40 C3d 239 '251 '219 CR 420: INORDINATE DELAY BETWEEN ARREST, INDICTMENT AND TRIAL MAY IMPAIR A DEFENDANT'S ABILITY TO PRESENT AN EFFECTIVE DEFENSE. BUT THE MAIN EVILS PROTECTED AGAINST BY THE SPEEDY TRIAL GUARANTEE EXIST APART FROM ACTUAL OR POSSIBLE PREJUDICE TO AN ACCUSED'S DEFENSE. TO LEGALLY ARREST AND DETAIN. THE

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GOVERNMENT MUST ASSERT PROBABLE CAUSE TO BELIEVE THE ARRESTEE HAS COMMITTED A CRIME. ARREST IS A PUBLIC ACT THAT MAY SERIOUSLY INTERFERE WITH THE DEFENDANT'S LIBERTY, WHETHER HE IS FREE OR NOT, AND THAT MAY DISRUPT HIS EMPLOYMENT, DRAIN HIS FINANCIAL RESOURCES, CURTAIL HIS ASSOCIATIONS, SUBJECT HIM TO PUBLIC OBLOQUY AND CREATE ANXIETY IN HIM, HIS FAMILY AND FRIENDS...

~~UNDER CALIFORNIA LAW, DELAY IN PROSECUTING A CASE IS UNLAWFUL WHETHER NEGLIGENT OR PURPOSEFUL~~

UNDER CALIFORNIA LAW, EVIDENCE OF DEPRIVATION OF DUE PROCESS SUFFICIENT TO WARRANT DISMISSAL DOES NOT REQUIRE A SHOWING OF PURPOSEFUL DELAY BY THE PROSECUTION. PREJUDICIAL DELAY CAUSED BY NEGLIGENCE OF LAW ENFORCEMENT AGENCIES OR BY THE PROSECUTION IS SUFFICIENT TO DENY A DEFENDANT THE RIGHT TO DUE PROCESS. (SCHERLING V-SUPERIOR COURT (1978) 22 CA3d 493, 87-149 CR 597; PENNEY V-SUPERIOR COURT (1972) 23 CA3d 941, 953, 105 CR 162.

~~CONSTITUTIONAL VIOLATION IS THE RESULT OF ADMINISTRATIVE FAILURE OR NEGLIGENCE ON THE PART OF THE STATE OR THE PROSECUTION. THE STATE MUST SHOW THAT IT BE~~

~~NEGLIGENT~~. (PLEZBERT V-SUPERIOR COURT (1971) 22 CA3d 169, 99 CR 340; PENNEY V-SUPERIOR COURT (1972) 23 CA3d 941, 105 CR 162; RICE V-SUPERIOR COURT (1975) 49 CA3d 200, 205, 122 CR 389; SYKES V-SUPERIOR COURT (1973) 9 CA3d 83, 106 CR 786; JONES V-SUPERIOR COURT, supra BARKER V-WINGO, supra.)

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\* CONCLUSION \*

THE UNNECESSARY DELAY OF ARRAIGNMENT WAS A VIOLATION OF DEFENDANT'S RIGHT TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 15 OF THE CALIFORNIA CONSTITUTION. BECAUSE THE DELAY WAS LENGTHY, THE DEFENDANT WAS PREJUDICED BY THE DELAY, AND THERE APPEARS TO BE NO JUSTIFICATION FOR THIS DELAY. THE DEFENDANT THEREFORE RESPECTFULLY ASKS THIS COURT TO DISMISS THE ACCUSATORY PLEADING.

JAN. 15<sup>TH</sup>, 2008

RESPECTFULLY SUBMITTED.

Mr. Andre Ferguson

**Proof of Service**

I, the undersigned, say:

I am over eighteen years of age and not a party to the above action. My business address is 555 Seventh Street, San Francisco, California 94103.

On \_\_\_\_\_, I personally served copies of the attached on the following:

Office of the District Attorney  
City and County of San Francisco  
850 Bryant Street, Room 300  
San Francisco, California 94103

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 200\_\_, at San Francisco, California.

FROM: MR. ANDRE' M. FERGUSON  
COUNTY JAIL #5

P.O. BOX 67

SAN BRUNO, CA. 94066

**RECEIVED**

MAR 10 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

*JP*



10: U.S. DISTRICT COURT  
450 Golden Gate Ave.

P.O. BOX 36060

SAN FRANCISCO, CA.

(ZIP code)

94102-9680

FILED

CLOSED, E-Filing, HABEAS, ProSe

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:08-cv-00953-MMC  
Internal Use Only**

Ferguson v. District Attorney  
Assigned to: Hon. Maxine M. Chesney  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)





Date Filed: 02/14/2008  
Date Terminated: 02/27/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

**Petitioner****Andre M. Ferguson**

represented by **Andre M. Ferguson**  
County Jail #5  
2344489  
P.O. Box 67  
San Bruno, CA 94066  
PRO SE

V.

**Defendant****District Attorney**

Date Filed	#	Docket Text
02/14/2008	 <u>1</u>	PETITION for Writ of Habeas Corpus (NO PROCESS); (IFP PENDING). Filed by Andre M. Ferguson. (aaa, Court Staff) (Filed on 2/14/2008) (Entered: 02/20/2008)
02/14/2008	 <u>2</u>	Letter from Clerk requesting a signed and completed IFP application or filing fee of \$5.00. (aaa, Court Staff) (Filed on 2/14/2008) (Entered: 02/20/2008)
02/14/2008		CASE DESIGNATED for Electronic Filing. (aaa, Court Staff) (Filed on 2/14/2008) (Entered: 02/20/2008)
02/27/2008	 <u>3</u>	ORDER ADMINISTRATIVELY CLOSING CASE; DIRECTIONS TO CLERK. Signed by Judge Maxine M. Chesney on February 27, 2008. (mmcsec, COURT STAFF) (Filed on 2/27/2008) (Entered: 02/27/2008)